



STATE BOARD OF EQUALIZATION

April 9, 1959

Attention: Mr. Houstin Shockey
Tax Counsel

Gentlemen:

This is in reply to your letter of March 20 in which you state that you sell video tape recorders, and in one instance a recorder was erroneously shipped by you to the --- location of your customer rather than to its --- location as it had requested. An employee of your customer accepted delivery of the machine and reshipped it to ---.

It thus appears that, regardless of the original intent, the sale was, in fact, completed upon delivery of the machine to the purchaser in this State. This resulted in a taxable sale and it was not rendered exempt by the subsequent shipment by the purchaser to a point outside this State. The exemption is based on constitutional grounds and the courts have held that this requires shipment by the seller pursuant to the sales agreement to the out-of-State point. Delivery to the buyer or his representative in this State will not suffice to satisfy the requirements of the constitutional exemption. Regardless of the fact that a mistake was made, this is not, in our opinion, legally sufficient to excuse payment of the sales tax with respect to a transaction actually handled in such a manner that the tax under the law applies thereto.

The provisions of Sections 6008 and 6009.1 of the California Revenue and Taxation Code have no bearing on this matter, as they are concerned solely with the application of the use tax. The present situation involves solely an application of the sales tax.

Very truly yours,

E. H. Stetson
Tax Counsel